

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Volume No. 347

July 2004

REMINDER OF ORDER OF BUSINESS

July

- 1 On or before this date the county treasurer shall certify a list of real estate delinquencies for tax sale. (IC 6-1.1-24-1)

On or before July 1 of each year, each county assessor shall certify to the county auditor the assessment value of the personal property in every taxing district. (IC 6-1.1-3-17)

- 2 Before this date, the county auditor should receive County Form 144 from officers, boards, commissioners and agencies "Statement of Salaries and Wages Proposed to be Paid Officers and Employees." (IC 36-2-5-4) The county auditor shall present these forms to the county executive at its July meeting. The county executive shall review and make its recommendations. Before August 20 the county executive shall present County Form 144 and its recommendations to the county fiscal body.

- 5 Legal Holiday - Independence Day (IC 1-1-9-1)

- 12 On or before this date make distribution of Dog Fund apportionment from Auditor of State - second Monday. (IC 15-5-9-11)

Distribute congressional interest to school corporations - second Monday.
(IC 21-1-1-54)

- 15 In those counties participating in Public Employees' Retirement Fund, last day to make pension report and payment for the second quarter of 2004 to the Public Employees' Retirement Fund.

- 20 Last day to report and make payment of balance of State and County Income Tax withheld in the month of June to Indiana Department of Revenue.

- 31 Last day to file quarterly unemployment compensation reports with Indiana Employment Security Division.

Last day for county treasurer to mail demand notices to delinquent personal property taxpayers. (IC 6-1.1-23-1)

August

- 1 First day annual tax sale can be held. (IC 6-1.1-24-2(a)(9))

- 4 Last date for county officers and department heads to file the respective budget estimates with county auditor - Wednesday following first Monday in August. (IC 36-2-5-9)

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REMINDER OF ORDER OF BUSINESS
(Continued)

- 18, 19,
20 County Treasurer's Annual Conference – Four Winds, Bloomington, Indiana.
- 19 Last date for board of commissioners to review Statements for Salaries and Wages Proposed to be Paid Officers and Employees' and to make its recommendations to the county council. (IC 36-2-5-4(b))
- 20 Last day to report and make payment of State and County Income Tax Withheld in the month of July to Indiana Department of Revenue.
- 31 Last date for first publication of county budget (10 days prior to public hearing). (IC 6-1.1-17-3)

September

- 6 Legal Holiday - Labor Day. (IC 1-1-9-1)
- 7 Last date for second publication of county budget (7 days after the first publication and at least 3 days before public hearing). (IC 5-3-1-2)
- 10 Last date for budget public hearing (10 days prior to adoption). (IC 6-1.1-17-5(a))
- 19-20 Last date to comply with provisions of IC 36-2-5-11, "Each ordinance shall be read on at least two separate days before it's final adoption."
- Last date for taxing officials to file copies of budgets and tax levy with county auditor for presentation to County Tax Adjustment Board. (IC 6-1.1-17-5(d))
- 20 Last date county council may meet to determine budgets and tax rates. (IC 6-1.1-17-5(a)(3))
- Last day to report and make payment of State and County Income Tax withheld in the month of August to Indiana Department of Revenue.
- 22 First meeting of County Tax Adjustment Board, if applicable. (IC 6-1.1-29-4) (On September 22 or on first business day after, if September 22 is not a business day.)

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CITY AND TOWN COURT COST FUND

IC 33-19-7-3 requires that three percent (3%) of all court costs collected by the Clerk of the Circuit Court to be set aside by the County Auditor in a City and Town Court Cost Fund. Such funds shall be distributed semiannually to each city and town in the county that maintains a law enforcement agency and prosecutes at least fifty percent (50%) of its ordinance violations in a circuit, superior, or county court in the county. If a city or town located in Marion County prosecutes its ordinance violations in a municipal court, then that city or town would qualify for such distribution.

The county auditor shall determine the amount to be distributed to each city and town qualified as follows:

STEP ONE: Determine the population of the qualified city or town.

STEP TWO: Add the populations of all qualified cities and towns determined under STEP ONE.

STEP THREE: Divide the population of each qualified city and town by the sum determined under STEP TWO.

STEP FOUR: Multiply the result determined under STEP THREE for each qualified city and town by the amount of the qualified municipality share.

The county auditor shall semiannually (in June and December) distribute to each qualified city and town the amount computed for that city or town under STEP FOUR.

If no city or town qualifies for a semiannual distribution, the monies shall remain in the city and town court cost fund for future distribution, it is not to be transferred to the County General Fund.

COMPENSATION OF SPECIAL PROSECUTING ATTORNEYS

IC 33-14-1-6 deals with the appointment and compensation of special prosecuting attorneys. In regard to compensation this statute states:

"If the special prosecutor is not regularly employed as a full-time prosecuting attorney or a full-time deputy prosecuting attorney, the compensation for the special prosecutor's services:

- (1) shall be paid to the special prosecutor from the unappropriated funds of the appointing county; and
- (2) shall not exceed a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, and travel expenses, and reasonable accommodation expenses actually incurred.

If the special prosecutor is regularly employed as a full-time prosecuting attorney or deputy prosecuting attorney, the compensation for this special prosecutor's services:

- (1) shall be paid out of the appointing county's unappropriated funds to the treasurer of the county in which he regularly serves; and
- (2) must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, travel expenses, and reasonable accommodation expenses actually incurred."

IC 33-14-7-5(d) states the State shall pay, from the State General Fund, the minimum annual salary of a prosecuting attorney.

IC 33-14-7-5(a) states that the salary of a full-time prosecuting attorney shall be the same as the salary paid to the circuit court judge of the same judicial circuit.

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COMPENSATION OF SPECIAL PROSECUTING ATTORNEYS (Continued)

IC 33-13-12-7.1 states that the salary of full-time circuit court judged shall be \$90,000.00.

Based on fifty-two (52) five (5) day weeks, (total two hundred sixty (260) days) the maximum daily per diem rate for a special prosecuting attorney who is not regularly employed as a full-time prosecuting attorney or a full-time deputy prosecuting attorney is \$346.15.

This rate would also be applicable in the case of reimbursement to another if the special prosecutor is employed as a full-time prosecuting attorney or deputy prosecuting attorney.

TEMPORARY JUDGES

IC 33-13-16 authorizes judges of circuit, superior, or county courts to appoint temporary judges and sets their compensation at twenty-five dollars (\$25) per day. This statute states that the compensation of temporary judges is to be paid by the county.

MEDICAL CARE FOR INMATES

IC 11-12-5-5(b) states, "... A person confined to a county jail may be required to make a copayment in an amount of not more than fifteen dollars (\$15) for each provision of any of the following services:

- (1) Medical Care
- (2) Dental Care
- (3) Eye Care
- (4) Any Other Health Care Related Services."

However, a person confined to a county jail is not required to make the copayment if: (1) the person does not have funds in the trust account at the time of service, (2) the person does not have funds in the trust account within 60 days after the service, (3) the service is an emergency, (4) the service is a result of an injury received in the county jail, and (5) the service is provided at the request of the sheriff or jail administrator.

IC 11-12-5-5(e) states " Rules for the implementation of this section must be approved by the county legislative body." This would appear to mean that in most instances the County Commissioners will need to adopt a Home Rule Ordinance setting the amount of the fee to be charged. IC 11-12-5-5(d) states "Money collected must be deposited into the County Medical Care for Inmates Fund." However, since this is a reimbursement of costs, this should go to the fund that paid the costs of the service.

The State Board of Accounts audit position in regard to this statute is as follows:

- 1. Monies received by the county auditor from the county sheriff for this copayment may be receipted into the fund in which payment for services provided were or will be paid from, or;
- 2. Into the newly created County Medical Care for Inmates Fund.

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RECORD OF HOURS WORKED

IC 5-11-9-4 provides that records be maintained showing which hours were worked each day by officers and employees of the county.

This requirement can be met by preparing an endorsement on the payroll claim form showing the general work schedule and listing the specific employees who worked hours different from that general work schedule. Each elected officer or head of each department would be responsible for preparing such endorsement on the payroll claim for their office or department.

If an employee is employed by more than one (1) public agency or in more than one (1) position within that public agency, it is also essential that an accurate record of hours worked be maintained. In these instances we recommend that each agency and department records reflect hours worked in both positions.

TAX SALE – PARTIAL PAYMENTS

IC 6-1.1-24-1.2 (b) states, "A county treasurer may accept partial payments of delinquent property taxes, assessments, penalties, interest, or costs under subsection (a) after the list of real property is certified under section 1 of this chapter."

The acceptance of a partial payment after July 1st will not remove the property from the tax sale. IC 6-1.1-24-1.2(a) states: "A tract or an item of real property **may not be removed from the list certified** under section 1 of this chapter before the tax sale **unless all delinquent taxes, special assessments, penalties due on the delinquency, interest, and costs directly attributable to the tax sale have been paid in full.**"

ADDITIONAL LEGISLATION

The following bill was missed when digesting the bills for the April 2004 Special Legislation Bulletin.

PUBLIC LAW 95 – HOUSE ENROLLED ACT 1401 – EFFECTIVE JULY 1, 2004

-Court Fees

Adds IC 33-37-5-25 – In each action filed in a court, the clerk shall collect a judicial insurance adjustment fee of one dollar (\$1). This does not apply to a criminal proceeding, a proceeding for an infraction violation, and a proceeding for an ordinance violation. In each action in which a person is convicted of an offense, required to pay a pretrial diversion fee, found to have committed an infraction, or found to have violated an ordinance, the clerk shall collect a judicial insurance adjustment fee of one dollar (\$1).

Amends IC 33-37-7-1 – The clerk shall semiannually distribute to the auditor of state 100% of the judicial insurance adjustment fee.

PURCHASES OF COMPUTER HARDWARE AND SOFTWARE

The purchase of a computer system (hardware and software) is subject to the Public Purchases Law (IC 5-22); however, IC 5-22-10-7 allows a purchasing agent to make a special purchase of data processing contracts or license agreements for:

- (1) software programs; or
- (2) supplies or services, when only one (1) source meets the using agency's reasonable requirements.

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PURCHASES OF COMPUTER HARDWARE AND SOFTWARE (Continued)

If it is determined that a special purchase of data processing contracts or license agreements for software programs or supplies or services, the purchasing agent may make a purchase without soliciting bids or proposals. However, the special purchase must be made with competition as is practicable under the circumstances. (IC 5-22-10-2)

STATE AND FEDERAL MILEAGE RATES

The current mileage rate paid to State Employees in travel status is 34 cents per mile.

The current Federal mileage rate is 37 and ½ cents.

SALE, EXCHANGES, TRANSFER OR LEASE OF PROPERTY

REAL PROPERTY

APPRAISALS, PUBLICATIONS AND BIDS

IC 35-1-11-4 states, "(a) A disposing agent who wants to sell or transfer real property must comply with this section, except as permitted by section 4.1, 4.2, 5, 5.5, 8, 14, or 15 of this chapter.

(b) The disposing agent shall first have the property appraised by two (2) appraisers. The appraisers must be:

- (1) professionally engaged in making appraisals;
- (2) licensed under IC 25-34.1; or
- (3) employees of the political subdivision familiar with the value of the property.

The appraisers shall make a joint appraisal of the property.

(c) After the property is appraised, the disposing agent shall publish a notice in accordance with IC 5-3-1 setting forth the terms and conditions of the sale and, when subsection (e) is employed, may engage an auctioneer licensed under IC 25-6.1 to advertise the sale and to conduct a public auction. The advertising conducted by the auctioneer is in addition to any other notice required by law and shall include a detailed description of the property to be sold stating the key numbers, if any, of the tracts within that property.

If the disposing agent determines that the best sale of the property can be made by letting the bidders determine certain conditions of the sale (such as required zoning or soil or drainage condition) as a prerequisite to purchasing the property, the disposing agent may permit the bidders to specify those conditions. The notice must state the following:

- (1) Bids will be received beginning on a specific date.
- (2) The sale will continue from day to day for a period determined by the disposing agent of not more than sixty (60) days.
- (3) The property may not be sold to a person who is ineligible under section 16 of this chapter.
- (4) A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:
 - (A) beneficiary of the trust; and
 - (B) settler empowered to revoke or modify the trust.
- (d) A bid must be open to public inspection. A bidder may raise the bidder's bid, and subject to subsection (e), that raise takes effect after the board has given written notice of that raise to the other bidders."

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SALE, EXCHANGES, TRANSFER OR LEASE OF PROPERTY (Continued)

OTHER PROCEDURES

IC 36-1-11-4 also states, "(e) The disposing agent may also engage an auctioneer licensed under IC 25-6.1 to conduct a sale by public auction. The auction may be conducted either at the time for beginning the sale in accordance with the public notice or after the beginning of the sale. The disposing agent shall give each bidder who has submitted a bid written notice of the time and place of the auction.

(f) The disposing agent may, before expiration of the time set out in the notice, sell the property to the highest and best bidder. The highest and best bidder must have complied with any requirement under subsection (c)(4). However, the disposing agent may sell the property for less than ninety percent (90%) of the appraised value of the tracts only after having an additional notice of the sale published in accordance with subsection (c). The disposing agent may reject all bids.

(g) If the disposing agent determines that, in the exercise of good business judgment, the disposing agent should hire a broker or auctioneer to sell the property, the disposing agent may do so and pay the broker or auctioneer a reasonable compensation out of the gross proceeds of the sale. However, the disposing agent must still comply with the procedural requirements of this section. The disposing agent may hire one (1) of the appraisers as the broker or auctioneer."

IC 36-1-11-5.5 also contains a special provision for the sale or transfer of real property for no compensation or a nominal fee to a not-for-profit corporation created for educational or recreational purposes. Additionally, other possible applicable provisions exist concerning townships; IC 20-4-5-8 and IC 20-5-19-1, conveyance to a city, etc.

PERSONAL PROPERTY

Personal property subject to disposal (trucks, mowers, desks, tables, chairs and/or other moveable equipment), is governed by IC 5-22-22.

USE OF AUCTIONEER

IC 5-22-22-4 states, "(a) If the property to be sold is:

(1) one (1) item, with an estimated value of one thousand dollars (\$1,000) or more; or
(2) more than one (1) item, with an estimated total value of five thousand dollars (\$5,000) or more; the purchasing agency may engage an auctioneer licensed under IC 25-6.1 to advertise the sale and conduct a public auction.

(b) The advertising by an auctioneer under this section must include a detailed description of the property to be sold.

(c) The purchasing agency shall pay an auctioneer who conducts a sale under this section from the gross proceeds of the sale received before other expenses and liens are paid."

PUBLIC SALE OR SEALED BIDS

IC 5-22-22-5 states, "(a) If:

(1) an auctioneer is not engaged under section 4 of this chapter; or
(2) the surplus property is not sold through an Internet auction site under section 4.5 of this chapter; the purchasing agency shall sell the property at a public sale or by sealed bids delivered to the office of the purchasing agency before the date of sale.

(b) Advertisement of the sale shall be made in accordance with IC 5-3-1.

(c) All sales shall be made to the highest bidder."

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SALE, EXCHANGES, TRANSFER OR LEASE OF PROPERTY (Continued)

PUBLIC OR PRIVATE SALE OR TRANSFER WITHOUT ADVERTISING

IC 5-22-22-6 states, "If the property to be sold is:

(1) one (1) item, with an estimated value of less than one thousand dollars (\$1,000); or
(2) more than one (1) item, with an estimated total value of less than five thousand dollars (\$5,000); the purchasing agency may sell the property at a public or private sale or transfer the property, without advertising."

EXCHANGE OF PROPERTY BETWEEN GOVERNMENTAL BODY

IC 5-22-22-10 states, "(a) A purchasing agency may exchange property with another governmental body upon terms and conditions agreed upon by the governmental bodies as evidenced by adoption of a substantially identical resolution by each entity.

(b) A transfer under this section may be made for any amount of property or cash as agreed upon by the governmental bodies."

Various other procedures are provided in IC 5-22 concerning internet sales, recyclable and worthless property.

The governing board should seek written advice of the county attorney for interpretation of any of the provisions relating to selling or other disposition of property no longer needed by the county.

CORRECTION TO QUESTION FROM AUDITOR'S FALL CONFERENCE

This is to clarify an answer that was in the January 2004 Bulletin to Question #41, which stated, No, you should issue a refund. Answer #41 should state: No, you should not issue a refund. This is their problem, not yours.

ELECTION APPORTIONMENT FORM #151

Effective July 1, 2004, this form will become obsolete. The law changed and this form will now be prescribed by the State Election Division.

Make sure that for any municipal elections after this date that you get the most current form from the election division.

MORTGAGE FEE

Public 73-2004 created a new fee to be charged by the county recorder. The fee is \$3 for each mortgage recorded. \$.50 goes to the recorder's perpetuation fund and \$2.50 to the state.

The recorder will remit the state's share to the auditor monthly. The auditor then will remit this semiannually to the state. The auditor will need to create a new fund to hold this fee until remittance to the state. For uniformity purposes, all auditors and recorders should call this fee the same. Therefore, on the report of collections, title the fee Mortgage Fee. Auditors will create the new fund and title it Mortgage Fee Fund.

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EDIT

Many counties have adopted the EDIT tax. To spend these funds the county must do the following two items:

1. Commissioners must adopt a capital improvement plan.
2. Council must appropriate this fund consistent with the capital improvement plan.

Our audit position that the EDIT fund must be appropriated is based upon the following. IC 36-2-5-2(b) states. "The county fiscal body shall appropriate money to be paid out of the treasury, and money may be paid out of the treasury only under an appropriation made by the fiscal body, except as otherwise provided by law." We do not see anything in IC 6-3.5-7 that specifically allows the EDIT fund to be paid without an appropriation. Therefore, the EDIT fund must be appropriated by the county council but for only those items included in the capital improvement plan.

RECAP OF NEW COURT COST LEGISLATION

This is to clarify the new legislation with regards to fees collected by the clerk.

Judicial Administrative Fee - \$1 added to all cases except the Deferral Program and Seatbelt Violations. The clerk will distribute this semiannually to the state. **THIS FEE IS EFFECTIVE JULY 1, 2004.**

Judicial Insurance Adjustment Fee - \$1 added to all cases except the Deferral Program and Seatbelt Violations. The clerk will distribute this semiannually to the state. **THIS FEE IS EFFECTIVE JULY 1, 2004.**

Small Claims Service Fee - \$5 for each defendant named or added in the small claim action. The clerk will distribute this monthly to the county general fund. **THIS FEE IS EFFECTIVE JULY 1, 2005.**